Office-Supreme Court, U.S.
FILED
APR 22 1983
STEVAS,
CLERK

No. 82-766

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SECRETARY OF STATE OF MARYLAND,
Petitioner,

v.

JOSEPH H. MUNSON COMPANY, INC.,
Respondent.

On Writ of Certiorari to the Court of Appeals of Maryland

BRIEF *AMICUS CURIAE* ON BEHALF OF INDEPENDENT SECTOR; NATIONAL HEALTH COUNCIL, INC., REPRESENTING MEMBER VOLUNTARY HEALTH AGENCIES; AND MEMBER ORGANIZATIONS OF INDEPENDENT SECTOR INDIVIDUALLY IN SUPPORT OF RESPONDENT *

ADAM YARMOLINSKY
Counsel of Record
STEPHEN T. OWEN
MICHAEL B. JENNISON
ABBOT KOMINERS
KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Washington, D.C. 20006
(202) 467-5900
Attorneys for Amici Curiae

April 1983

* See overleaf

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	2
SUMMARY OF ARGUMENT	4
ARGUMENT:	
I. The *Parens Patriae* Responsibilities Of State Government Toward Charitable Organizations Do Not Justify Government Control Of The Cost Of Charitable Fund Raising	6
II. No Regulatory Scheme Promulgated Under The Maryland Law, Providing For Exceptions To The 25 Percent Rule, Could Provide Objective Standards For Waiver Of The Rule	8
CONCLUSION	13
APPENDIX	1a

TABLE OF AUTHORITIES

Cases Page

Cantwell v. Connecticut, 310 U.S. 296 (1940) 12
Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978) 4
Fernandes v. Limmer, 663 F.2d 619 (5th Cir. 1981) 4, 10
Hynes v. Mayor of Oradell, 425 U.S. 610 (1976) 8, 12
Largent v. Texas, 318 U.S. 418 (1943) 12
Lovell v. Griffin, 303 U.S. 444 (1938) 12
National Foundation v. City of Fort Worth, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970) 4, 13
Niemotko v. Maryland, 340 U.S. 268 (1951) 8
Police Department of Chicago v. Mosley, 408 U.S. 92 (1972) 8
Schneider v. Irvington, 308 U.S. 147 (1939) 8, 12
Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969) 8
Thornhill v. Alabama, 310 U.S. 88 (1940) 8
Trustees of the Philadelphia Baptist Association v. Hart's Executors, 17 U.S. (4 Wheat.) 1 (1819) .. 6
Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980) ..... *passim*

Constitution, Statutes, and Regulations

Constitution of the United States:

U.S. CONST. amend I 5, 6, 7

United States Code:

26 U.S.C. § 509 (1976 & Supp. V 1981) 2

Annotated Code of Maryland:

MD. ANN. CODE art. 41, § 103D (1978) 3, 10
MD. ANN. CODE art. 41, § 103A (Supp. 1982) .. 9

English Statute:

Statute of Charitable Uses, 43 Eliz., ch. 4 (1601) 6

TABLE OF AUTHORITIES—Continued

Code of Maryland Regulations: Page

MD. ADMIN. CODE § 01.02.04.05B (Supp. I 1978) 10, 11

MD. ADMIN. CODE § 01.02.04.04A (Supp. I 1978) 9-10

Miscellaneous

Brief *Amicus Curiae* of Coalition of National Voluntary Organizations *et al.*, Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980) 4

Brief for the States of Connecticut, Illinois, Kansas, Massachusetts, New Jersey, New York, Pennsylvania, South Dakota, and Tennessee as *Amici Curiae* in Support of Petitioner 6, 7, 11

Brief of Petitioner Secretary of State of Maryland.. 8

PRESIDENT'S TASK FORCE ON PRIVATE SECTOR INITIATIVES, BUILDING PARTNERSHIPS (1982) 2

L. SALAMON & A. ABRAMSON, THE FEDERAL BUDGET AND THE NONPROFIT SECTOR (1982) 2, 10

Suhrke, *Schaumburg: A Supreme Court Reminder of Basic Values*, PHILANTHROPY MONTHLY, March 1980, at 4 6-7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-766

SECRETARY OF STATE OF MARYLAND,
Petitioner,

v.

JOSEPH H. MUNSON COMPANY, INC.,
Respondent.

On Writ of Certiorari to the Court of Appeals of Maryland

BRIEF OF *AMICI CURIAE*

This brief *amicus curiae* is submitted by Independent Sector [1] on its own behalf; the following Independent Sector member organizations individually: American Red Cross, Association of Governing Boards of Universities and Colleges, Camp Fire, Inc., Council for Financial Aid

---

[1] Independent Sector was formed in 1980 to preserve and enhance this Nation's tradition of giving, volunteering, and not-for-profit initiative; its 450 members and affiliates include many of the major philanthropic and voluntary organizations in the country. Independent Sector acts in this matter through its board of directors; its joining in this brief does not imply that each of its member organizations has taken a position on the questions presented here.

to Education, Izaak Walton League of America, Lutheran Council in the U.S.A., National Association of Independent Colleges and Universities, National Board of YMCAs, National Conference of Catholic Charities, National Council of the Churches of Christ in the U.S.A., and the National Mental Health Association; and the National Health Council, Inc., representing the following member voluntary health agencies: American Cancer Society, American Diabetes Association, American Lung Association, American Red Cross, Arthritis Foundation, Committee to Combat Huntington's Disease, Cystic Fibrosis Foundation, March of Dimes Birth Defects Foundation, Muscular Dystrophy Association, National Council on Alcoholism, National Easter Seal Society, National Foundation for Ileitis & Colitis, National Hemophilia Foundation, National Kidney Foundation, National Multiple Sclerosis Society, and National Society to Prevent Blindness on the side and in support of respondent Joseph H. Munson Company, Inc.

INTEREST OF *AMICI CURIAE*

The *amici* are all public charities as defined in the Internal Revenue Code. 26 U.S.C. § 509 (1976 & Supp. V 1981). They rely primarily on the general public for the support of their activities. The significant cuts in the availability of government support for these activities, as the federal government seeks to transfer responsibilities to the private sector, and the reductions in direct government support for the clients of some of these activities have increased the demand on voluntary organizations, which have in turn sought to establish a broader base of charitable contributions. *See* President's Task Force on Private Sector Initiatives, *Building Partnerships* (1982); L. Salamon & A. Abramson, *The Federal Budget and the Nonprofit Sector* (1982). The marginal cost of expanded fund raising endeavors has increased correspondingly.

The *amici* in effect stand in the place of the fraternal police associations that were discouraged by the Maryland law here at issue from contracting with the respond-

ent for charitable fund raising support, but chose not to intervene. The issue that primarily concerns the *amici* is the limitation on fund raising costs incurred by charitable organizations themselves—an issue that is before the Court in this case without regard to the identity of the respondent, in the same fashion that the Court accepted and determined the issue in *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 634 (1980).

The *amici* are particularly aware that "the costs incurred by charitable organizations conducting fund raising campaigns can vary dramatically depending upon a wide range of variables, many of which are beyond the control of the organization." *Id.* at 637 n.10.

The *amici* are concerned that a new or unpopular organization, or an established organization using a new and untried or simply more expensive fund raising technique to sustain its revenues may transgress a percentage limitation and be subject to administrative discretion as to the reasonableness of these expenditures, in an area where there are no objective guideposts. The *amici* believe, in the last analysis, that the reasonableness of marginal costs cannot be judged without judging the worthiness of the cause.

This concern is exacerbated by the language of the Maryland statute, which permits waiver only in cases where the 25 percent limitation would "effectively prevent the charitable organization from raising contributions." Md. Ann. Code art. 41, § 103D(a) (1978). The statute thus seems to preclude efforts to raise funds by new methods or on a wider scale. The criminal sanction attached to the Maryland statute would force the *amici*, in their normal course of business, to treat it as a prior restraint.

The *amici* have another concern. The crazy quilt of state legislation regulating the cost of charitable solicita-

tion is apparent from the tabulation in the appendix to this brief.[2] Twenty-four States have some form of percentage limit on fund raising costs. *See infra* app. A compilation of local ordinances—like those tested in *National Foundation v. City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970), and *Fernandes v. Limmer*, 663 F.2d 619 (5th Cir. 1981)—would require a computer. *See, e.g.*, Brief *Amicus Curiae* of Coalition of National Voluntary Organizations *et al.* app. B at 4a-7a, *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 610 (1980). If the Maryland statute is found to be constitutional, the *amici* can expect to have to undertake an enormous volume of *nisi prius* and appellate litigation in order to continue to conduct their national fund raising campaigns in the face of statutes and ordinances that may be even more restrictive than the Maryland statute in the scope of their exceptions from an arbitrary rule, either in the formulation of the exception, or in its application.

SUMMARY OF ARGUMENT

A state may not regulate activities of charitable organizations beyond its historic *parens patriae* functions, which are limited to preventing use of gifts in a fashion inconsistent with the will of donors who cannot continue stewardship and denying charitable form to organizations whose goals are contrary to public policy. A statute that imposes a criminal penalty on a charity spending more than 25 percent of receipts on fund raising costs limits the charity's efforts to seek support for bona fide charitable endeavors whose nature and purposes are fully dis-

---

[2] This patchwork effect is the opposite of the situation described in Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 128 (1978), where the Court observed, "The evil that appellants perceive in this litigation is not that the several States will enact differing regulations, but rather that they will all conclude that divestiture provisions are warranted."

closed, and therefore exceeds the traditional limit of government responsibility.

Petitioner's expansion of *parens patriae* beyond its historic bounds, in a fashion never judicially sanctioned, does not advance a state interest compelling enough to justify infringement of first amendment rights. Nor is the statute saved by its narrow exception and waiver scheme. Exercise of first amendment rights cannot be subject to official discretion. The mere grant of authority to censor unpopular speech is an unconstitutional restraint, whether abused or not.

Costs of raising funds in excess of the 25 percent limitation can arise in several ways, none of which provides an adequate, independent rationale for the rule. Unexpected external events can subject an organization to criminal liability despite the best intentions of fund raising planners. Discouraging inefficiency as justification for an arbitrary limit invites administrative inquiry into an organization's charitable and educational means and ends. Finally, an organization should be free to pursue stubbornly an unpopular but legitimate charitable objective, free from second-guessing by state authorities.

Petitioner's emphasis on the liberality of the statute's implementation thus far is misplaced. The statute and regulations, taken together, allow for only two of the many situations in which high fund raising costs are reasonably foreseeable. The statute does, however, allow unacceptable, case-by-case intervention in the internal affairs of charitable organizations whenever a waiver is required. "[S]olicitation is characteristically intertwined with informative and perhaps persuasive speech . . . ." *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 610, 632 (1980). Administrative discretion to permit or deny the cost of fund raising above an arbitrary level inevitably involves administrative judgment about how much effort should be spent on the propagation of an idea.

ARGUMENT

I. THE *PARENS PATRIAE* RESPONSIBILITIES OF STATE GOVERNMENT TOWARD CHARITABLE ORGANIZATIONS DO NOT JUSTIFY GOVERNMENT CONTROL OF THE COST OF CHARITABLE FUND RAISING.

The responsibility of the state for supervision of charitable organizations can be traced back at least to the Statute of Charitable Uses, 43 Eliz., ch. 4 (1601) (*see Trustees of the Philadelphia Baptist Association v. Hart's Executors*, 17 U.S. (4 Wheat.) 1, 36-38 (1819)). The individual philanthropist is using his own resources, but the managers of a charitable organization are using other people's resources, and the donors may not be able to see to it that their resources are used for the purposes they intended, either because they are deceased, or because there are too many of them, and they cannot maintain a continuing stewardship. Thus the state must assume a protective role. The state may ensure that donated funds are not diverted for purposes unrelated to the charitable ends for which the contributions were intended. This is the traditional function of the state in relation to charitable enterprises. There is another *parens patriae* function in this area. The state may deny the charitable form to organizations whose purposes are unlawful or contrary to public policy. This is a narrowly limited exception, limited by the scope of the first amendment.[3]

---

[3] The Attorney General of Massachusetts, writing on behalf of nine State governments, asserts that "certain sections of the charitable community have become convinced that *Schaumburg* stands for the proposition that charitable activities (and in particular those activities associated with solicitation) are constitutionally immune from any kind of regulation." Brief for the States of Connecticut *et al.* at 9 (citing only Suhrke, *Schaumburg: A Supreme Court Reminder of Basic Values*, PHILANTHROPY MONTHLY, March 1980, at 4). This astonishing statement is unsupported by the authority cited. Indeed, Suhrke acknowledges, "A key holding of the Court

But what the state cannot do is limit the efforts of individual organizations to seek public support for bona fide charitable endeavors, whose nature and purposes are fully disclosed. If a fully informed public chooses voluntarily to contribute to a hopeless cause, like the elimination of slavery, or the enfranchisement of women, by what leave can the state step in?

The dangers in allowing the state to intervene in fund raising efforts are illustrated in the brief *amicus curiae* filed by the Attorney General of Massachusetts on behalf of nine States in support of petitioner. The brief describes the procedures by which charitable organizations engage in so-called donor acquisition campaigns, seeking to add to their existing membership "where the fundraising percentage exceeds 100 or even 200%." Brief for the States of Connecticut *et al.* at 29. The brief argues, "A charity's interest in fundraising is typically only extinguished when it actually incurs a net cost in the process. Yet if all charities were to fundraise in this way there would be disastrous consequences." *Id.* at 30.

The picture of all, or substantially all charitable organizations exhausting their managerial resources—and the public's patience—by seeking the last dollar of contributions seems a bit overdrawn. But charitable organizations are forced to seek additional funds to fill the gap created by government funding cutbacks. Who should determine which organization may go how far in "donor acquisition"? If the Attorneys General of nine States believe they are entitled to exercise such power, then the restraining hand of this Court is badly needed.

---

which must not be overlooked . . . is [*Schaumburg's*] affirmation that government does indeed have the right to regulate charitable solicitation. The point is that it must use 'precise' tools consistent with First Amendment rights in doing so." *Id.* at 6.

II. NO REGULATORY SCHEME PROMULGATED UNDER THE MARYLAND LAW, PROVIDING FOR EXCEPTIONS TO THE 25 PERCENT RULE, COULD PROVIDE OBJECTIVE STANDARDS FOR WAIVER OF THE RULE.

The exercise of first amendment rights cannot be subject to official discretion. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-17 (1976); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 97-98 (1972); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153 (1969); *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951); *Schneider v. Irvington*, 308 U.S. 147, 164 (1939). The mere existence of this discretion without its abuse amounts to an unconstitutional restraint on protected activity. *Thornhill v. Alabama*, 310 U.S. 88 (1940). Regulation of charitable solicitation should leave "little or no discretion in the hands of [local] authorities to 'censor' unpopular speech." *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 645 (1980) (Rehnquist, J., dissenting). Petitioner's emphasis on the "extremely liberal manner," Petitioner's Brief at 3, in which the Secretary of State has applied the waiver provision does not give the *amici* assurance that the next Secretary of State will be as liberal, and indeed points up the subjective nature of the Secretary's decision. The *amici* do not relish the prospect of funding even their most ambitious programs at the pleasure of a government official.

Excess costs of fund raising, over the 25 percent limitation in the Maryland statute, can arise in several ways:

—as a result of fraud or self-dealing;

—as a result of inefficiency;

—as a result of unexpected external developments beyond the organization's control;

—as a result of the stubborn pursuit of unpopular or unattractive but nevertheless legitimately charitable objectives.

Fraud and self-dealing are violations of our criminal statutes. As the *Schaumburg* opinion points out: "Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." 444 U.S. at 637 (citations omitted). To punish such conduct in the guise of regulating solicitation costs raises questions of due process, quite apart from first amendment issues.

To penalize fund raising costs as excessive on efficiency grounds requires judgments about what is indeed the more efficient or effective means of conducting the activities of the organization, on which it often depends for its continued existence. Since "solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues," *id.* at 632, the issue of efficiency cannot usually be separated from subjective decisions about the organization's charitable and educational objectives. It is clearly less expensive to use volunteers than to use professionals for door-to-door soliciting. But if the organization wishes to give the volunteers an evening or two of training before they go out on the street, it may not be able to find enough volunteer hours to cover the community, and may have to fill in with professionals. Is this a justified expense? Or the organization may think it worthwhile to use broadcast television spot announcements in advance of a door-to-door campaign, or to experiment with "narrowcast" cable television messages.[4] Is that expense justified?

---

[4] The statute excludes the cost of printing and mailing, but does not mention the cost of electronic media or newspaper advertising. Activities that are primarily educational in nature, including publishing, may be held within the 25% limit. The statute defines "solicit" as including "[t]he distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication which, directly or by implication, seeks contributions by the public for one or more charitable purposes." MD. ANN. CODE art. 41, § 103A(i)(3) (Supp. 1982). The implementing regulations provide, "The expenses of public education materials and activities,

As the United States Court of Appeals for the Fifth Circuit pointed out in *Fernandes v. Limmer*, 663 F.2d 619, 631 (5th Cir. 1981) (emphasis supplied), paraphrasing *Schaumburg*: "The realm of religious and *charitable* organizations . . . includes groups whose unorthodox messages will inevitably yield less cost-effective solicitation results. May [the local authorities] premise the simultaneous admission of, for example, evangelical Baptists and the exclusion of Krishna devotees on the results of their fund solicitation efforts?"

It might be argued that the Maryland statute leaves no room for administrative discretion in granting the waiver, because it permits an administrative waiver only "in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions," Md. Ann. Code art. 41, § 103D(a) (1978), and must therefore be read to bar any excess-cost fund raising technique, so long as the organization can remain solvent (or so long as it can raise any money at all) with the aid of fund raising methods that take 25 percent or less of its proceeds. This reading of the statutory language would call for a narrower exercise of administrative discretion. But it would also prevent organizations from pursuing just the kind of additional, and probably less cost-efficient, fund raising methods that they need to keep abreast of their rapidly growing responsibilities. *See* L. Salamon & A. Abramson, *supra* p. 2.

The statutory language might, however, be read more broadly in the light of the regulations issued under it, which provide, "The Secretary may permit an organization to exceed the 25-percent limitation . . . upon a showing that it is necessary to the accomplishment of the organization's charitable purpose and that there is no other reasonable alternative." Md. Admin. Code § 01.02.04.05B(1) (Supp. I 1978).

---

which include an appeal, specific or implied, for financial support, shall be fully allocated to fund-raising expenses." MD. ADMIN. CODE § 01.02.04.04A(3) (Supp. I 1978).

The language of the regulation, "necessary to the accomplishment of the organization's charitable purpose," seems to go beyond the literal meaning of the statutory language to give the organization somewhat more latitude in its fund raising practices.

But the only guidance that the regulations offer in interpreting the broad language of their initial provision, is a further provision that

> Instances in which the 25-percent limitation would effectively prevent an organization from raising contributions, *include, but are not limited to,* the following situations:
>
> (a) When there are extraordinary, unusual and non-recurring circumstances which can be factually supported; and
>
> (b) When an organization is less than 2 fiscal years old and in the developmental stage.

Id. § 01.02.04.05B(2) (emphasis supplied).

If these regulations are construed to mean that the Secretary of State may decide whether the organization's budgetary goals are justified, as argued in the brief *amicus curiae* of the Massachusetts Attorney General, discussed above, his decision would seem an extraordinarily intrusive interference with the conduct of the organization's business. If the regulations are construed to mean that the charity remains free to fix its budgetary goals, but that it has the burden of proving that excess-cost fund raising methods are the only means available, even this interpretation seems to invite a judgment by the Secretary on mixed questions of charitable management and charitable policy that ought to remain within the purview of the private sector. The Secretary of State could not determine the applicability or nonapplicability of the exception on the issue of efficiency without the possibility of intolerable and unconstitutional interference in the internal affairs of the organization.

Apart from the issues of fraud or inefficiency, excess fund raising costs can arise from unpredictable and uncontrollable external developments, more likely in the denominator (the volume of contributions) than in the numerator (the cost of fund raising). "The costs incurred by charitable organizations conducting fundraising campaigns can vary dramatically depending on a wide range of variables, many of which are beyond the control of the organization." *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637 n.10 (1980). In such a situation, the organization may be exposed to criminal prosecution if it did not anticipate the shortfall in contributions and request a waiver in advance, and if the Secretary disagrees with its judgment about the necessity of the fund raising method employed.

Finally, if the excess fund raising costs are the result of an organizational decision to pursue its cause at all costs, then there is no way that an administrative tribunal can make a judgment that those costs are excessive, without making a judgment as to the worth of the cause. This Court has steadfastly refused to permit a bona fide charitable organization to be subjected to such administrative interference. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620-22 (1976); *Largent v. Texas*, 318 U.S. 418, 422 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940); *Schneider v. Irvington*, 308 U.S. 147, 163-64 (1939); *Lovell v. Griffin*, 303 U.S. 444, 451-52 (1938); *see also Schaumburg*, 444 U.S. at 640, 643 n.1 (Rehnquist, J., dissenting).

In the simplest case, an organization may believe that the importance of the cause it supports is so great that it is justified in seeking public support for an extended or indefinite period of time, although there are no indications that the public is being persuaded. Again, the exceptions in the Maryland statute for new organizations or nonrecurring circumstances would not deal with this case. Or an organization may feel that the problem it is attempting to deal with is so urgent that it is justified in

seeking immediate widespread support even though the percentage of costs will be very high. Or an organization may believe it is particularly important that the cause it supports be brought to the attention of the most intransigent segment of the population, although the financial return will be very small. Or an established organization may take up a new cause, as the March of Dimes did with birth defects. *See National Foundation v. City of Fort Worth*, 415 F.2d 41, 43 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970). All these examples illustrate the view of the *Schaumburg* court that "solicitation is characteristically intertwined with informative and perhaps persuasive speech," 444 U.S. at 632, and that administrative discretion to permit or deny excess fund raising costs inevitably involves judgment about how much effort should be spent on the propagation of an idea, whether it relates to the welfare of policemen or to the protection of the environment.

CONCLUSION

For all these reasons, the judgment of the Maryland Court of Appeals should be affirmed.

Respectfully submitted,

ADAM YARMOLINSKY
STEPHEN T. OWEN
MICHAEL B. JENNISON
ABBOT KOMINERS
1776 F Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 467-5900

Attorneys for Amici Curiae

Of Counsel:

KOMINERS, FORT, SCHLEFER & BOYER
1776 F Street, N.W.
Suite 500
Washington, D.C. 20006

April 1983

APPENDIX

State Laws Limiting
Noncharitable Use of Charitable Contributions

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Alabama	No statute regulating charitable solicitations, but there are provisions penalizing theft by deception. ALA. CODE §§ 13A-8-1(1), -2 (1982).			
Alaska	No statute regulating charitable solicitations, but it is a criminal offense to use false pretenses in soliciting. ALASKA STAT. § 11.20.450 (1970).			
Arizona	No statute regulating charitable solicitations, but there are provisions for theft by misrepresentation and for theft by impersonation of a representative of a person or organization. ARIZ. REV. STAT. ANN. §§ 13-1802, -2006 (1978).			
Arkansas	ARK. STAT. ANN. § 64-1610 (1980).	Compensation to professional fund raisers for services rendered paid out of all funds collected	Maximum compensation of 25% of contributions received and not less than 75% of funds so collected shall be expended for the purposes and/or causes for which such funds were solicited	No
	Also, criminal penalty for persons who obtain money or property by false pretense or misrepresentation. ARK. STAT. ANN. § 64-1612 (1980).			
California	Statute regulating paid fund raisers and requiring disclosure of % of total used for fund raising expenses, but no % limita. CAL. BUS. & PROF. CODE § 17510.3(a)(3) (West Supp. 1981).			
	Also, criminal penalty for persons who make false representations of fact in solicitation of money or property. CAL. PENAL CODE § 532d (West 1970).			

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Colorado	No statute regulating charitable solicitations, but it is a criminal offense to cause a person from whom funds are solicited to believe that those contributions will be used primarily for the benefit of a charitable organization when such use is not intended by the solicitor. COLO. REV. STAT. § 18-5-115 (1978).			
Connecticut	CONN. GEN. STAT. ANN. § 19-323o (West 1977).	Professional solicitors only, not including cost of goods or services provided	a) Where actual cost to charitable organization of goods sold or services is less than $500—maximum compensation of 25% including reimbursement for expenses b) Where actual cost is greater than $500— (i) maximum compensation of 50% up to and including $10,000 (ii) maximum compensation of 40% of contributions greater than $10,000 but less than $20,000 (iii) maximum compensation of 35% of contributions greater than $20,000	No
	Also, criminal penalty for persons who pretend to represent an organization with the intent to defraud another. CONN. GEN. STAT. ANN. § 53a-130 (West 1972).			

Delaware	No statute regulating charitable solicitations, but there is criminal penalty for theft by false representation of a past or present fact. DEL. CODE ANN. tit. 11, § 843 (1974).			
District of Columbia	Statute regulating persons who solicit for donations and requiring disclosure of expenses and actual or intended distributions of contributions collected, but no % limits. D.C. CODE ANN. § 2-706 (1981). Also, criminal penalty for persons who obtain anything of value by false pretenses with intent to defraud. D.C. CODE ANN. § 22-1301 (1981).			
Florida	FLA. STAT. ANN. § 496.11(8) (West Supp. 1982) (repealed effective Oct. 1, 1984).	Payable to a professional solicitor, including all costs	Maximum compensation of 25%	No
	Also, criminal penalty for persons who misrepresent what, if any, organization for which they solicit or misrepresent persons who endorse the cause for which they solicit. FLA. STAT. ANN. § 496.11 (West 1972) (repealed effective Oct. 1, 1984).			
Georgia	GA. CODE ANN. § 43-17-7 (1982).	Total contributions, not including: goods sold, food, drink, postage, printing, and related costs	At least 70% for charitable purposes for which contributions were solicited and received	Yes,* for one year; renewable for one year or without limitation
	Also, provision for criminal penalty for persons who make false statements regarding the purpose of solicitations by telephone. GA. CODE ANN. § 16-9-54 (1982).			
	Also, criminal penalty for organizations and professional solicitors for use of the name of another person for the purpose of solicitation, without his consent. GA. CODE ANN. § 43-17-9 (1982).			

* Counties, municipalities or consolidated governments may add requirements and rules but may not alter obligations. GA. CODE ANN. § 43-17-17 (1982).

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Hawaii	HAWAII REV. STAT. § 467B-7 (1976 & Supp. 1981).	Payments to professional fund raisers, not including cost of goods and services	Maximum compensation of 20%	No
	Also, criminal penalty for persons who misrepresent or mislead anyone as to the charitable nature of their solicitations and for organizations and solicitors who use a device in solicitation which would tend to confuse the public. HAWAII REV. STAT. § 467B-9 (1976 & Supp. 1981).			
Idaho	Statute regulating nonprofit corporations and charities by means of Attorney General supervision, but no % limits, IDAHO CODE § 67-1401(4) (Supp. 1982).			
	Also, criminal penalty for persons who obtain control of property of another by deception or conduct heretofore known as obtaining money or property under false pretenses. IDAHO CODE § 18-2403(2) (Supp. 1982).			
Illinois	Act to Regulate Solicitation of Funds, § 9(c), ILL. REV. STAT. ch. 23, § 5109(c) (Smith-Hurd Supp. 1982).	Sending of goods, wares and merchandise not ordered or requested by the recipient, not including costs of merchandise and services	Maximum of 25% to supplier of goods	No
	Act to Regulate Solicitation of Funds, § 9(c), ILL. REV. STAT. ch. 23, § 5109(c) (Smith-Hurd Supp. 1982).	Gross receipts not including costs of merchandise and services	Minimum of 75% to charitable purpose	No
	Also, criminal penalty for persons committing false personation of a representative of any charitable organization. Criminal Code of 1981, § 17-2(a), ILL. REV. STAT. ch. 38, § 17-2(a) (Smith-Hurd 1977).			

Indiana	No statute regulating charitable solicitations, but criminal penalty for persons committing theft by obtaining unauthorized control over the property of another by creating or confirming false impressions in another person. IND. CODE ANN. § 35-43-4-1 (b) (4) (Burns 1979). Also, there is criminal penalty for persons who misrepresent their own or another's identity with the intent to defraud. IND. CODE ANN. § 35-43-5-3(7) (Burns 1979).			
Iowa	IOWA CODE ANN. § 122.1 (West 1949).	All donations	All donations are to be devoted to the purpose stated in bond application and for which donations were given	Secretary of State has full discretion regarding the issuance of permits to organizations which solicit public donations; he must satisfy himself that applicant is reputable and that the purposes for which donations are solicited are legitimate and worthy
	Also, criminal penalty for persons who divert funds obtained by public donation to purpose other than that for which donations contributed. IOWA CODE ANN. § 122.6 (West 1949).			
Kansas	KAN. STAT. ANN. § 17-1747(c) (1981).	Sending of goods, wares and merchandise not ordered or requested by the recipient; not including costs of merchandise or services	Maximum of 25% to supplier of goods not ordered	No
	KAN. STAT. ANN. § 17-1747(c) (1981).	Gross receipts	Minimum of 75% to charitable purpose	No
	Also, charitable organizations subject to civil penalties for use of any artifice to defraud by means of false pretenses. KAN. STAT. ANN. § 17-1747(c) (1981). Also, criminal penalty for persons obtaining control over property by deception. KAN. STAT. ANN. § 21-3701(b) (1981).			

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Kentucky	Statutes regulating solicitations, but no % limits.* KY. REV. STAT. §§ 367.650-.670 (Supp. 1982). Also, criminal penalty for persons who obtain property by creating or reinforcing a false impression as to state of mind, law, value or intention. KY. REV. STAT. § 514.040 (Supp. 1982).			
Louisiana	No statute regulating charitable solicitation, but it is a criminal offense to misappropriate a thing of value by means of fraudulent conduct, practices or misrepresentations. LA. REV. STAT. ANN. § 14:67 (West 1974).			
Maine	Statute regulating fund raisers and any other person, requiring disclosure of % distribution if less than 70% expended for program services but, no % limits; professional fund raisers must disclose to donor % that is fee and expenses. ME. REV. STAT. ANN. tit. 9, § 5012 (1980). Also, criminal penalty for persons who obtain control over property by deception. ME. REV. STAT. ANN. tit. 17A, § 354 (Supp. 1980).			
Maryland	MD. ANN. CODE art. 41, § 103D (1978).	Any fund raising activity, not including compensation for feasibility studies, cost of goods, food, entertainment, drink, postage	Maximum of 25%	Yes; where the 25% limitation would effectively prevent the charitable organization from raising contributions
	Also, criminal penalty for persons who obtain control over property of owner by means of deception. MD. ANN. CODE art. 27, § 342 (1982).			

* Op. Ky. Att'y Gen. 76-605 evaluates a city ordinance that limits the % of solicited funds that can go to costs, but the opinion determines only that the ordinance and the statute are not in conflict.

Massachusetts	MASS. ANN. LAWS ch. 68, § 21(a) (Michie/Law. Co-op. 1978 & Supp. 1983).	Professional solicitors (only), not including cost of goods and services	Maximum compensation of 15%	No
	MASS. ANN. LAWS ch. 68, § 22 (Michie/Law. Co-op. 1978 & Supp. 1983).	Any fund raising activity of charitable organization, not including cost of goods and services	Maximum of 50% of gross income devoted to salaries, wages, and expenses related to soliciting or receiving contributions	Yes; "where it would be in the public interest" to allow the solicitation
	Also, civil penalty for charitable organization for use of any artifice to defraud by means of false pretenses. MASS. ANN. LAWS ch. 68, § 30(e) (Michie/Law. Co-op. 1978).			
	Also, criminal penalty for persons who obtain property of another by false pretenses with the intent to defraud. MASS. ANN. LAWS ch. 226, § 30 (Michie/Law. Co-op. 1980).			
Michigan	Statute regulating charitable organizations and professional fund raisers, but no % limits. MICH. COMP. LAWS ANN. §§ 400.271-.293 (1976 & Supp. 1982).			
	Also, criminal penalty for persons who obtain money or property from another person with the intent to defraud or cheat. MICH. COMP. LAWS ANN. § 750.218 (1968).			
Minnesota	MINN. STAT. ANN. § 309.555, subd. 1a (West Supp. 1981).	Management or general costs and fund raising costs of charitable organization	"Unreasonable amount" —an amount in excess of 30% of total income and revenue is presumed to be an unreasonable amount; an amount of 30% or less may be challenged as unreasonable	Yes, only a presumption

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Minnesota—continued	MINN. STAT. ANN. § 309.555, subd. 1b (West 1969).	Professional fund raisers only	"Unreasonable amount"—an amount in excess of 30%; an amount less than 30% may also be challenged	No; 30% is an absolute maximum, although this may be adjusted downward.
	MINN. STAT. ANN. § 309.555, subd. 2 (West 1969).	Management, general costs and fund raising costs involved in the provision of goods and services	"Unreasonable amount" is presumed to be an amount in excess of 30% of the difference between the cost and amount for which sold	Yes, only a presumption
	Also, criminal penalty for charitable organizations and persons acting on their behalf for use of fraud, false pretense, or misrepresentation in connection with charitable solicitation. MINN. STAT. ANN. § 309.581 (West 1969).			
	Also, criminal penalty for persons who obtain property of another by swindling, artifice or trick. MINN. STAT. ANN. § 609.52 (West 1964).			
Mississippi	No statute regulating charitable solicitations, but criminal penalty for persons who falsely impersonate another and who receive money or property intended to be delivered to the individual impersonated. MISS. CODE ANN. § 97-19-35 (1973).			
	Also, criminal penalty for person who obtains money or personal property from another by false pretense with the intent to defraud. MISS. CODE ANN. § 97-19-39 (1973).			
Missouri	No statute regulating charitable solicitations, but criminal penalty for persons who steal by means of deceit. MO. ANN. STAT. § 570.030 (Vernon 1979).			
Montana	No statute regulating charitable solicitation, but criminal penalty for persons who obtain control over the property of another by deception. MONT. CODE ANN. § 94-6-302 (Supp. 1977).			

Nebraska	Statute regulating voluntary health and welfare organizations but no % limits. NEB. REV. STAT. § 28-1401 (1979).			
	Also, criminal penalty for persons who obtain property of another by deception. NEB. REV. STAT. § 28-512 (1979).			
Nevada	Statute regulating charitable organizations, but no % limits. NEV. REV. STAT. § 86.190 (1979).			
	Also, criminal penalty for persons who obtain money or other valuable thing from another by false pretenses with the intent to defraud. NEV. REV. STAT. § 205.380 (1979).			
New Hampshire	N.H. REV. STAT. ANN. § 320:20 (1966)	Total funds collected by any person, group or organization	Minimum of 85% to be remitted to the purpose for which solicitation is conducted	No *
	Also, criminal penalty for persons who obtain property of another by deception. N.H. REV. STAT. ANN. § 637:4 (1966).			
New Jersey	N.J. STAT. ANN. § 45:17A-10(a) (West 1978).	Payments to a professional fund raiser and professional solicitor, including reimbursement, not including cost of goods and services provided	Maximum compensation of 15%	No
	N.J. STAT. ANN. § 45:17A-14(a)(5) (West 1978).	Total funds raised by solicitations mailed together with unordered merchandise by a charitable organization, professional fund raiser, or other person	Minimum of 50% must be devoted to charitable purposes	No
	Also, criminal penalty for persons who obtain property of another by deception. N.J. STAT. ANN. § 2C:20-4 (1982).			

* Sections 320:21 and 31:91 grant limited discretion to local governments for sale of flowers and tags.

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
New Mexico	No statute regulating charitable solicitations, but criminal penalty for persons who misappropriate the property of another by means of fraudulent conduct, practices or representations. N.M. STAT. ANN. § 30-16-6 (1978).			
New York	N.Y. EXEC. LAW § 175(2)(e) (McKinney Supp. 1981).	Total funds raised by solicitations mailed together with unordered merchandise by a charitable organization or other person	Minimum of 50% must be devoted to charitable purposes	No
	Also, criminal penalty for persons who wrongfully obtain the property of another by conduct formerly known as obtaining property by false pretenses, which requires proof of the falsity of the representation of a past or existing fact, the intent to defraud, reliance on the false pretenses and obtaining the property by the accused. N.Y. PENAL LAW § 155.05 (McKinney 1975).			
North Carolina	Statute regulating professional solicitors and any licensed solicitor or organization or person soliciting on behalf of them, but no % limits. N.C. GEN. STAT. § 131C-14(b) (Supp. 1981). They must report amount pledged, received, and disbursed, and disclose percentage of fund raising expenses and purpose of the organization. The Social Services Commission to adopt rules as to form of disclosure. N.C. GEN. STAT. § 131C-16 (Supp. 1981).			
	Also, criminal penalty for persons who obtain money or property from another by false pretenses with intent to cheat or defraud. N.C. GEN. STAT. § 14-100 (1981).			
North Dakota	N.D. CENT. CODE § 50-22-04.1 (1982).	Payments to professional solicitor, not including costs of goods and services	Maximum compensation of 15%	No

	N.D. CENT. CODE § 50-22-04.1 (1982).	An organization's solicitation and fund raising expenses (including payments to professional solicitors), not including costs of goods and services	Maximum of 35%	Yes; in the event special facts or circumstances are presented requiring expenses higher than 35%, the Secretary of State has discretion to allow such higher expense and impose such conditions as he shall deem necessary for such redemption
	Also, criminal penalty for persons who obtain property of another by deception. N.D. CENT. CODE § 12.1-23-02 (1982).			
Ohio	Statute regulating charitable solicitations by professional fund raisers and reports by professional fund raisers, but no % limits.* OHIO REV. CODE ANN. § 1716.04 (Page 1978).			
	Also, criminal penalty for persons who deprive another of property or services by deception. OHIO REV. CODE ANN. § 2913.02 (Page 1975).			
Oklahoma	OKLA. STAT. ANN. tit. 18, § 552.3(B) (West Supp. 1982).	Charitable organization, professional fund raiser or professional solicitor; but, in annual report, an organization is to separate expenses from payments to fund raiser or solicitor	Maximum compensation to professional fund raiser or solicitor of 10% of net receipts, and the charitable organization must receive minimum of 90% of said receipts; an organization must have full control of funds collected	No

* No discretion granted by state statute; however, city ordinance that provided for 25% limit on payment to a non-affiliated solicitor as a rebuttable presumption of unreasonableness was upheld as not violating the charity's right of free speech. Holloway v. Brown, 62 Ohio St. 2d 65, 403 N.E.2d 191 (1980).

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
Oklahoma—continued	Also, criminal penalty for persons who obtain money or property of another by means of trick, deception or false pretenses, with the intent to defraud. OKLA. STAT. ANN. tit. 21, §§ 1541.1-.2 (West Supp. 1982).			
Oregon	OR. REV. STAT. § 128.855 (1981).	Costs of solicitation and other administrative costs; not including cost of merchandise or goods or direct costs of sponsoring a fund raising dinner, bazaar, show, circus, or any form of benefit performance	Costs may not be "grossly disproportionate to the proportion of donations . . . used for charitable purposes"; costs of solicitation exceeding 25% of net proceeds, or combined costs of solicitation and administrative costs exceeding 50% of net proceeds shall be "rebuttably presumed to be grossly disproportionate"	Yes, only a rebuttable presumption.
	Also, criminal penalty for persons who make false or misleading representations in the course of any solicitation of charitable donations. OR. REV. STAT. § 128.813 (1981).			
	Also, criminal penalty for persons who obtain property of another by deception, with intent to defraud. OR. REV. STAT. § 164.085 (1981).			
Pennsylvania	PA. STAT. ANN. tit. 10, § 160-6(a) (Purdon Supp. 1982).	Payments to professional solicitor	Maximum compensation of 15%	No

	PA. STAT. ANN. tit. 10, § 160-6(a.1) (Purdon Supp. 1982).	Cost of solicitation and fund raising expenses (including payments to professional solicitors and internal fund raising and solicitation salaries and expenses, but not including cost of goods and services)	Maximum expense of 35%	Yes; with discretion vested in the Commission on Charitable Organizations (similar to North Dakota provision)
	Also, criminal penalty for persons who obtain the property of another by deception. PA. STAT. ANN. tit. 18, § 3922 (Purdon 1973).			
Rhode Island	R.I. GEN. LAWS § 5-53-4(a) (Supp. 1982).	Payment to professional solicitor, not including cost of goods and services provided	Maximum compensation of 25%	No
	R.I. GEN. LAWS § 5-53-4(a.1) (Supp. 1982).	Cost of solicitation and fund raising expenses incurred by a charitable organization (including payments to professional solicitors, but not including cost of goods and services)	Maximum of 50%	Yes; with discretion vested in the department of business regulations (similar to North Dakota provision)
	Also, criminal penalty for persons who obtain money or property of another by false pretenses with the intent to cheat or defraud. R.I. GEN. LAWS § 11-41-4 (1981).			
South Carolina	S.C. CODE ANN. § 33-55-80 (Law. Co-op. 1977).	Payment to professional solicitor; not including cost of goods and services	Maximum compensation of a "reasonable percent" of total funds collected	Yes; since there is no definition of "reasonable"

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
South Carolina—continued	Also, possible civil or criminal penalty for persons who misrepresent or mislead in the course of a solicitation of funds. S.C. CODE ANN. § 33-55-140 (Law. Co-op. 1977).			
	Also, criminal penalty for persons who obtain property of another by false pretenses with the intent to cheat and defraud. S.C. CODE ANN. § 16-13-240 (Law. Co-op. Supp. 1982).			
South Dakota	S.D. CODIFIED LAWS ANN. § 37-27-24 (1977).	Payment to professional fund raiser, including cost of any expense incurred pursuant to contract with fund raiser	Maximum compensation of 30%	No
	Also, criminal penalty for persons who obtain property of another by deception. S.D. CODIFIED LAWS ANN. § 22-30A-3 (1979).			
Tennessee	TENN. CODE ANN. § 48-2213 (1979).	Payment to professional solicitor, including all fund raising costs	Maximum compensation of 15%	No
	TENN. CODE ANN. § 48-2213 (1979).	Gross contributions expended for fund raising costs	An amount in excess of 25% spent on fund raising costs shall create a rebuttable presumption that such expenditures are unreasonable; an amount not in excess of 25% shall create a rebuttable presumption of reasonableness	Yes, only a rebuttable presumption

	Also, criminal penalty for persons who mislead another as to the nature and purpose of a solicitation. TENN. CODE ANN. § 48-2213 (1979).			
Texas	Statute regulating nonprofit corporations, but no % limits. TEX. REV. CIV. STAT. ANN. arts. 1396-1.01 to 11.01 (Vernon 1980).			
	Also, criminal penalty for persons who appropriate property of another without the other person's effective consent. TEX. PENAL CODE ANN. § 31.03 (Vernon Supp. 1981).			
Utah	Statute regulating charitable organizations and professional solicitors, but no % limits. UTAH CODE ANN. § 76-10-601 (1978).			
	Also, criminal penalty for persons who obtain control over property of another by deception with the intent to deprive the other person of the property. UTAH CODE ANN. § 76-10-405 (1978).			
Vermont	No statute regulating charitable solicitations, but criminal penalty for persons who received money while in the guise of another or who by false pretenses obtain money or property of another with the intent to defraud. VT. STAT. ANN. tit. 13, §§ 2001-2002 (1974).			
Virginia	Statute regulating professional solicitors; disclosure to donor is required of the minimum percentage of amount contributed that will be received by the charitable organization for its own use unless 70% of contribution is used for charitable purpose. VA. CODE § 57-55.1 (1981).			
	Also, criminal penalty for persons who obtain money from another by false pretense with the intent to defraud. VA. CODE § 18.2-178 (1982).			
Washington	WASH. REV. CODE ANN. § 19.09.100 (Supp. 1983).	Cost of solicitation, including payments to professional fund raisers, but not including cost of goods and services resold	Maximum of 20%	Yes; (similar to North Dakota provision)
	Also, criminal penalty for persons who obtain control over the property of another by deception. WASH. REV. CODE ANN. § 9A.56.020 (1977).			
	Also, criminal penalty for persons who assume a false identity as a representative of a person or organization with the intent to defraud. WASH. REV. CODE ANN. § 9A.60.040 (1977).			

State	Citation	Applicable To—	Cost Limitation	Provision for Exercise of Discretion
West Virginia	W. VA. CODE § 29-19-7(a) (1980).	Payments to professional solicitor, not including cost of goods and services provided	Maximum compensation of 15%	No
	Also, criminal penalty for persons who obtain money from another by false pretense with the intent to defraud. W. VA. CODE § 61-3-24 (1977).			
Wisconsin	Statute regulating solicitation of funds for charitable purposes, but no % limits. WIS. STAT. ANN. § 440.41 (West 1974 & Supp. 1982).			
	Also, criminal penalty for persons who obtain title to property by deceiving another with false representations, with intent to defraud. WIS. STAT. ANN. § 943.20 (West 1958 & Supp. 1982).			
Wyoming	No statute regulating charitable solicitations, but criminal penalty for persons who obtain money or property by false pretenses, with the intent to cheat or defraud. WYO. STAT. § 6-3-106 (1977).			